No. 116.

FILED
DEC 3 1900
JAMES H. MCKENNEY
CLERK

IN THE SUPREME COURT
OF THE UNITED STATES.

OCTOBER TERM, 1900.

Filed Dec. 3, 1900.

NO. 116.

W. W. CARGILL COMPANY,
Plaintiff-in-Error.

vs.

THE STATE OF MINNESOTA, EX REL.,
THE RAILROAD AND WAREHOUSE COMMISSION,
Defendants-in-Error.

BRIEF AND ARGUMENT OF DEFENDANTS-IN-ERROR.

W. B. DOUGLAS, Attorney General, and
W. J. DONAHOWER, Asst. Atty. General,
Attorneys for Defendants-in-Error.

IN THE SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 116.

W. W. CA[illegible]L COMPANY,

Plaintiff in Error,

vs.

THE STATE OF MINNESOTA, EX REL., THE RAILROAD AND WAREHOUSE COMMISSION,

Dfendant in Error.

BRIEF AND ARGUMENT ON BEHALF OF DEFENDANT IN ERROR.

Statement.

This is a Writ of Error from a final judgment made and entered in the Supreme Court of the State of Minnesota.

The question involved in this appeal is the validity of Chapter 148 of the General Laws of the State of Minnesota for the year 1895. By this act the State seeks to regulate the receipt, storage and shipment of grain at elevators and warehouses situated on the right of way of any railroad, its depot grounds, or any lands acquired or reserved by any railroad company in this State to be used in connection with its line of railway at any station or siding other than at terminal points.

Such elevators or warehouses are made subject to inspection and placed under the supervision of the Railroad and Warehouse Commission of the State and shall be known and designated as public country elevators or country warehouses.

Briefly stated, the provisions of the act, in so far as they may be made applicable to the business of elevators and warehouses situate upon the right of way of a railroad, depot grounds and other lands used in connection with such line of railroad, at stations or sidings other than at terminal points, which do not receive, handle, store or ship the grain of others for a compensation, are as follows:

Before the business of receiving, storing, shipping or handling grain may be lawfully carried on in any such elevator or warehouse, a license must be first obtained from the said Railroad and Warehouse Commission, which license confers upon the licensee, authority to operate his elevator or warehouse for the period of one year, in accordance with the laws of the State and such rules and regulations as shall be prescribed by said Commission.

The operation of a public country elevator or warehouse without the owner first obtaining such license, is a violation of law and is deemed a misdemeanor of which any party aggrieved may complain; and the said Railroad and Warehouse Commission may institute proceedings in the District Court for the county in which the elevator or warehouse in question is situated, to enjoin their further operation. It is made the duty of the party operating such country elevator or country warehouse, to keep a true and correct account in writing, in suitable books, of all grain received, stored and shipped at such elevator or warehouse, stating the weight, grade and dockage for dirt or other cause, on each lot of grain received in store for sale, storage or shipment. Any party selling or delivering grain at any country elevator or country warehouse who is aggrieved by reason of unjust and unfair weights or grades, or unreasonable dockage for dirt or other cause, may make complaint to said Railroad and Warehouse Commission, and it thereby becomes the duty of such Commissioner to inquire into and investigate such complaint and the charge therein contained, and shall have full authority to inspect and examine all the books, records and papers pertaining to the business of such elevator or warehouse, and all the scales, machinery, fixtures and appliances used therein. Parties operating any country elevators or country warehouse, are required to furnish, at the request of said Railroad and Waresouse Commission, an itemized statement of all grain received, stored in, or delivered or shipped from such elevator or warehouse during the year last past, which statement shall specify the kind, grade, gross and net weight, of all grain re-

ceived or stored and all grain delivered or shipped.

It shall be unlawful for any person, firm or corporation, who shall operate any country grain elevator or country grain warehouse under this act, to enter into any contract, agreement, understanding or combination with any person, firm or corporation who shall operate any other country grain elevator or country grain warehouse under this act, for pooling of the earnings or business of other, different and competing grain elevators or warehouses, so as to divide between them the aggregate or net proceeds of the earnings or business of such grain elevators or warehouses or any portion thereof.

There are various other provisions of the act which are applicable only to elevators and warehouses situated upon the right of way of a railroad company, which are engaged in the business of receiving and storing the grain of others for a compensation and issue elevator and storage receipts therefor.

The said W. W. Cargill Company, plaintiff in error, is a corporation organized under the laws of the State of Wisconsin, having its principal office and place of business at La Crosse, in said State, and owns and operates large terminal elevators at various points in said State. Said company also owns and operates a grain warehouse situate upon the right of way of the Chicago, Milwaukee & St. Paul R. R. Co., in the village of Lanesboro in the State of Minnesota, where considerable quantities of grain of various kinds are

marketed, sold and delivered to the said W. W. Cargill Company, and received and handled in its said grain warehouse, and shipped away in cars over said railway line. Said W. W. Cargill Company has never received and stored in this elevator grain except its own. The grain handled by said company at this point was purchased at said warehouse from farmers who had hauled it by wagon from the farms of the county and vicinity to this company for sale at said place of business, where it is weighed and graded by said company with its own appliances.

Said company has failed to take out a license from the Railroad and Warehouse Commission of the State of Minnesota as required by said law, or to recognize in any respect, the right of said Commission to regulate or supervise the operation of its said grain warehouse in receiving, storing, shipping or handling grain.

This action originated in the District Court of Ramsey County, in which proceeding the said Railroad and Warehouse Commission asked for judgment that the W. W. Cargill Company, the defendant, be permanently restrained from the further operation of the said elevator, in the receiving, storing or handling of wheat or duly licensed therefor by the said Commission. The judgment of the District Court was that said Chapter 148 of the General Laws of Minnesota for the year 1895, is unconstitutional and void, in so far as it attempts to declare warehouse and elevators in which only the grain of the owner is received, stored, shipped or handled, public elevators, and declaring said elevators and warehouses to be under the supervision and subject to inspection by the Railroad and Warehouse

Commission; that said chapter in so far as it applies to elevators and warehouses situated upon the right of way of a railway company in which the grain of others is received, stored, shipped or handled for a compensation, is constitutional and valid.

On appeal from the judgment of said District Court to the Supreme Court of the State of Minnesota the sole question passed upon by that Court was the validity of the law in question in so far as it applied to elevators and warehouses, situated on the right of way of a railroad company, receiving, storing, shipping or handling grain the own sole property of the party engaged in such elevator or warehouse business.

The Appellate Court reversed the judgment of the lower court and held that the act was valid in so far as it required a license and subjected the business of such elevator and warehouse companies to the reasonable and necessary rules and regulations of the Railroad and Warehouse Commission.

ARGUMENT.

I.

The business of transportation by a common carrier in all its details, and by all its agencies, is subject to reasonable control by the State in the exercise of its police power. The large sovereign powers given by the State to railway corporations are granted and exercised only upon the theory that these public rights are to be used to promote the general welfare. The right of eminent domain upon which primarily the railroad corporation bases its acquisition of the right of way, is granted by the State to facilitate public service and to conserve public uses.

Such corporation has been endowed with the power of eminent domain because it is a public highway and performs a public service, which save for the private enterprise, would be performed by the State.

The contention here made that the power to acquire a right of way by eminent domain is granted to enable the railroad corporation to discharge its duties to the public, is sustained

> *In Matter of Application of N. Y. Central & Hudson River, R. R. Co.*, 77 N. Y. Court of Appeals, 248,

in which the Court say:

> "The only limit to the power granted to railroad corporations to take lands for railroad purposes, is the reasonable necessity of the corpora-

tion in the discharge of its duty to the public. This includes the acquisition of lands for depots and buildings convenient for the * * * receipt, storage, safe-keeping and delivery of freight and property."

In recognition of the right of the public in certain uses and facilities afforded by the common carrier in its right of way, the Supreme Court of Minnesota, in the case of

Rhodes vs. N. P. R. R. Co., 34 Minn. 89,

say:

"Inasmuch as small grain transported in bulk cannot be conveniently loaded directly from teams into the cars, but must ordinarily be first placed in warehouses or elevators and temporarily stored there, these duties and obligations in regard to handling and storing grain were undoubtedly imposed upon railroad companies, as being necessarily incident to the convenient transportation of it by them as common carriers. Independently of any statute, common carriers have an undoubted right to adopt reasonable rules and regulations as to the place or places where they will receive freight for transportation. And in view of these statutory provisions already cited, we think it was clearly the legislative intent that, if a railroad company itself should furnish suitable warehouse facilities for receiving, handling and storing all grain designed for transportation over its road, that it might designate such warehouse or elevator as to the exclusive place at which it would receive grain for shipment at that station, and that it might refuse to receive it or furnish cars for its shipment

at any other place; but that when it failed or refused itself to furnish these facilities on the terms fixed by statute, then it should be required to allow others to build warehouses adjacent to its track, or else build sidetracks to warehouses near the station, so that the public might be furnished with the proper facilities. Of course, this obligation in such cases necessarily implies and includes the further obligation of furnishing cars, upon reasonable notice, in which to ship grain out of such warehouses."

Further on in the same opinion, it is said (p. 91), that:

"It is not important who owns the buildings, or who is put in charge of the business, or who receives the profits of it, but, in order to constitute a compliance with the statute, its business must be so conducted that, when a proposed shipper delivers his grain for transportation, and for temporary storage incident to said transportation, he can deliver it to the railroad company, and not be compelled to deliver it to some particular warehouseman, who might or might not be responsible, and to whom the shipper might not be at all willing to intrust his property."

The Court there had under consideration section 2, chapter 31, Gen. Laws 1874 (G. S. 1894, sec. 7657), which is as follows:

"Whenever any railroad company shall refuse to receive store, handle and deliver grain, at any station on the road, at the rates provided in section 1 of this act, then in such case said railroad company shall, upon demand, allow any person,

association or corporation to erect and maintain at such station, adjoining the railroadtrack or sidetrack, warehouses to receive store and ship grain; or, at the option of the railroad company such company shall build and maintain a sidetrack to and for the use and accommodation of any warehouse near the station. And no person keeping a warehouse or elevator shall in any case be compelled to pay the railroad company, or any person keeping any other warehouse or elevator, any sum or compensation for or on account of the privilege of doing business."

In this case the Court denies the right of the railway company to shift the duty of furnishing facilities for the receipt, storage, handling and shipment of grain to parties attaining through arrangement with such company, location upon the right of way, regardless of whether the facilities so furnished were sufficient to meet the demands of the business at such station. If, however, the railway company itself furnished at one of its stations, suitable warehouse facilities for receiving, handling, storing and delivering grain at the rates fixed by law, all grain designated or transportation over its road, it might designate such warehouse or elevator as to the exclusive place at such station at which it would receive grain for shipment and might refuse to receive it or to furnish cars for its shipment at any other place.

The decision of the Supreme Court of this state in the case last cited, confirms the position contended for by the defendant in error, viz: that it is primarily the duty of the common carrier to furnish all suitable and reasonable facilities for the receipt and transfer

of grain to the cars upon its line of railway; that such duty devolves upon the common carrier by reason of the greater advantages enjoyed and superior facilities offered in its right of way, and that the railway company failing to furnish such necessary and suitable facilities, parties acquiring the privilege of location on the right of way of a railroad company for the purpose of receiving, storing, shipping or handling grain, whether their own sole property or the property of others for a compensation, are performing a duty primarily that of the railroad company and are charged with the same duties and obligations to the public and subject to public control.

Plaintiff in error in the state court denied the proposition that the location of an elevator or warehouse upon the right of way of a common carrier whose cars are the only means or instrumentalities for shipping grain to terminal or foreign markets, effected such a business with a public interest.

It is not contended by the defendant in error that it is the location alone that is the determining factor in the question; but we do insist that the location of an elevator or warehouse on the right of way of a common carrier, coupled with the character of the product handled, and the exclusiveness of control and operation of the instrumentalities for weighing, grading and dockage, demands reasonable public supervision and regulation. A railroad company may permit a shipper to erect freight houses, elevators, warehouses and other structures for the convenience of storage and shipment,

without making the shipper's business one affected with a public interest and subject to state regulation, but when such buildings are used as *public market places* for the sale of grain hauled from the farms of the vicinity in wagons (see Reecord, p. 17, par. 8), such exemption from public control, we contend, is not enjoyed.

II.

It is contended by the state that the Cargill Elevator Co. is a public market place, where grain grown in the vicinity of the village of Lanesboro, is hauled by wagon and sold; received into the elevator and transferred to the cars of a railroad company. The ultimate object to be attained by any elevator or warehouse situated upon the right of way of a railroad company is the shipment by rail of the grain purchased as one's sole property or the grain of others stored and handled for a compensation. The business of a private elevator or warehouse conducted on the right of way of a railroad company is not carried on for the convenience of the public, nor is its object the furnishing of shipping facilities for grain growers. The location on the right of way is made to minimize the expense of transferring grain purchased from the public to the cars of the railroad company. The advantages of such location are used to the detriment of grain markets not so fortunately situated. By reason of the advantages enjoyed by this elevator and warehouse in minimizing the expense of operation, the public is induced to market its

grain upon the right of way. In short, a public utiltiy is enjoyed by the private grain buyer in conducting the business of buying and shipping grain.

In the case of the *Missouri Pacific R. R. Co. vs. Nebraska,* 17 Sup. Ct. Rep. 134, an action instituted by the Nebraska State Board of Transportation to compel the railway company to permit private parties to occupy its right of way with an elevator to be used in storing only the grain owned by a number of individuals voluntarily associated together for their own benefit, the Court say as follows:

> "A railroad corporation doubtless holds its station, grounds, tracks and right of way as its private property, *but for the public use for which it was incorporated;* and may in its discretion permit them to be occupied by other parties with structures convenient for the receipt and delivery of freight upon its railroad, so long as a free and safe passage is left for the carriage of freight and passengers; but how a railroad company can be compelled to do so against its will, is a wholly different question."

While the effect of the decision in this case is to deny the right of private parties to the privileges of the right of way of a railway company for the purpose of receiving and storing the grain of only those by whom the privilege was sought, we contend that the rule laid down cannot be made applicable to the facts of this case.

In the Nebraska case, the petitioners for the location on the right of way proposed to store only their own grain. There was to be no business enterprise conducted in the structure so located. The sole object to be attained was the storing of their own individual grain; no grain was to be purchased.

It is important to notice in connection with the reading of the Nebraska case, that the private ownership of the station ground, and right of way of the railway company is limited to the public uses for which such company was incorporated.

The Cargill Elevator Company is not only on the right of way for the purpose of immediate connection with the cars of the common carrier, but *for the purpose of acquiring by purchase from the farmers of the vicinity the grain which constitutes the entire bulk of its shipment.*

That an elevator or warehouse so operating is a public market, is stated by the Court.

In the Matter of Application of Cooper, etc., 28 Hun. (N. Y.) 515.

In this case application was made by Edward Cooper, Mayor of New York, to acquire title to lands for a public market. Authority was given to the municipality by statute to acquire lands by the right of eminent domain for a public purpose. The act of the legislature of New York under which proceedings were had

was entitled, "An act to provide for the establishment and maintenance of a public market place for farmers and market gardeners in the city of New York, for the acquisition of lands for this purpose, and for the regulation and management of the same." The act provided that certain lands situate in the city of New York should be declared a public market place where farmers and market gardeners might dispose of their farm or market produce. Condemnation proceedings were opposed on the ground that the purpose for which the lands was sought was not a public one.

The Court in determining what constitutes a public purpose, so as to authorize a proceeding to take lands by the exercise of the right of eminent domain, say:

> "The construction of a market for the sale of a particular kind of produce is similar in all respect to the appropriation of land for the use of a railroad which is to be used by the railroad company making application for it. It is a public use, although only benefiting the particular percons who use it, and the company which enjoys the franchise acquire by obtaining title to the land."

In this case it was decided that land may be taken by the exercise of the right of eminent domain for the establishment of a public city market, and that "it is not essential to the definition of a public market that it should be a place open to all persons for the sale of all commodities." It may be a public use, although limited to the sale of a particular kind of produce.

If, as we contend, the business carried on by the Cargill Elevator Company is in the nature of a public market, it follows that such business is properly the subject of reasonable supervision and regulation by the state in the public interests.

II.

The provisions of the act of 1895 applicable to the business conducted by the Cargill Elevator Company is a reasonable exercise by the state of its police power when its location upon the right of way of a railroad and its relation to the grain growing interests of the community are considered.

The great industry of the state, the production of grain and its shipment, constitute the most important factors in its business life. The grain growing districts are threaded with railroads; and elevators and warehouses for the purchase and shipment of grain are erected and maintained at all stations and sidings, and a very important part of the business of railways consists in the transportation of grain.

These facts have been recognized by the Supreme Court of this state in two of the most important cases involving the rights and defining the duties of railroad companies to the public with reference to the transportation of grain. The Court in *Guerney vs. Minneapolis Union Elevator Co.*, 65 N. W. Rep. 136, a case involving the right to establish a public elevator upon

the right of way of a railway; in recognizing the importance to the grain growing interests of the state of its transportation to markets, say:

> "Courts will, as a rule, take notice of whatever ought to be generally known within the limits of their jurisdiction, and we may well take judicial notice of the fact that the handling and transportation of grain constitute a very important part of the business of the railways of the state and that grain elevators and warehouses are reasonable and necessary, if not absolutely essential, to the feasible, prompt and economical handling, storing and transporting of grain by railroads. The erection and operation of grain elevators and warehouses upon the right of way of railroads with side tracks thereto, are matters of such general and public interest that the law has made provisions for the acquiring of a right to locate and operate them upon the right of way of railway companies without their consent."

The Supreme Court in the case of *Stuart vs. Great Northern Ry Co.,* 68 N. W. Rep. 208, stated as follows:

> "The methods of transportation and trade customs relating to the handling, sale and transporting of the products of this and other growing states, render grain elevators a practical necessity in the transfer of grain from the purchaser to the railway cars by which it is carried to the consumer. They are connecting links in the chain of transportation between the farmers' wagons and the

railway cars. Their use in facilitating the handling, storage and transportation of the products of the state is a public use and subject to legislative regulation and control."

While these cases have no direct bearing upon the question at issue, they indicate the importance in which the state Supreme Court views the business of handling and transporting grain and the important part that the handling and transportation of grain occupies in the business of railways within the state.

The various small grains of all kinds, including wheat, oats, corn, barley, rye, flax and buckwheat, constitute no small part of the general food supply. It is difficult to estimate what proportion of the grain raised in the state passes through elevators, public or private, in moving to terminal points and to the consumers. In some communities no doubt a portion of the grain that is shipped from the district in which it is raised is loaded upon the cars of the common carrier from wagons, but with the great progress that in recent years has been made in the adoption of superior facilities for the handling and shipment of grain, it is safe to say that very little grain gets to the car of the common carrier except through elevators. The elevators of the country, whether public or private, handling such a great portion of the general food supply become most important factors in the business life of a community.

The amount of grain that passes through the elevators and warehouses of this state and the amount of grain that is in storage, becomes of

the greatest importance when viewed with relation to the food supply. We contend that it is essential to the public welfare that the proper authorities should know at all times, or at least have the means of knowing, the total amount of available grain foods. Such information may be obtained from public elevators over which such supervision has now become established, but there is no means, except under the provisions of legislation similar to that in question, of gaining such information from elevators and warehouses which do not store and handle the grain of the public for a compensation.

Regulation by the state of such private warehouses and elevators to the extent of gaining information and statistics relative to the grain supply, is not an unreasonable and unwarranted interference in a private business. If a knowledge of the food supply of the country is of public importance and conducive to the general welfare, then the regulation and supervision by the state, of elevators and warehouses receiving, storing, handling and shipping grain for the purpose of obtaining such information and statistics, is conducive to the public good.

The provision of this law which requires an elevator or warehouse to keep a true and correct account in writing, of all grains received, stored and shipped at such elevator or warehouse, stating the weight, grade and dockage for dirt or other cause, serves the public interest, because it provides indispensable information in determining the grain and food supply of the country; and performs the further office of furnishing the

facts relative to grain and the grain raising business, which are valuable in a compilation of public statistics.

> "The public necessity of the exercise of the police power in any case is a matter addressed to the discretion of the legislature; but whether a given regulation is a reasonable restriction upon personal rights is a judicial question."
>
> *Tiedman Lim. Pol. Pow.,* Sec. 194.

> "Over the railway as a highway, and in all its public relations, the state, by virtue of its general legislative power, has supervision and control."
> *Id.*

There is little need under our system of government for placing a close and narrow interpretation on the police power or restricting its scope, so as to hamper the legislative power in dealing with the varying necessities of society and the new circumstances as they arise, calling for legislative intervention in the public interest.

Budd vs. New York, 143 U. S. 532.

When a business is a proper subject of the police power, the legislature may, in the exercise of that power, adopt any measures, not in conflict with some provisions of the constitution, that it sees fit; provided, only, they are such as have some relation to, and some tendency to accomplish the desired end; and if the measures adopted have such relation or tendency, the

courts will never assume to determine whether they are wise or the best that might have been adopted.

State vs. Corbett, 57 Minn. 349, citing
State vs. Donaldson, 41 Minn. 74, and
Rippe vs. Becker, 56 Minn. 100.

Except where the constitution has imposed limitations upon the legislative power, it must be considered as practically absolute, and to warrant the judiciary in declaring a statute invalid, they must be able to point out some constitutional limitation which the act clearly transcends.

Id., 350.

"It will probably not be disputed, that every one has a right to pursue in a lawful manner, any calling which he selects. The state can neither compel him to pursue any particular calling or prohibit him from engaging in any lawful business, provided he does so in a lawful manner. It is long recognized and beyond dispute, that the state in the exercise of its police power, is, as a general proposition, authorized to subject all occupations to a reasonable regulation, when such regulation is required for the protection of public interests or for the public welfare."

Tiedman on State and Federal Control, Vol. 1, page 235.

The act of 1895, in so far as its provisions are applicable to elevators and warehouses which do not handle

the grain of others for a compensation, requires that a license shall be taken out by the owner or owners thereof, and that it shall be unlawful for any person or persons to operate such an elevator or warehouse until duly licensed. It is obvious that by this provision, it was intended that the proper state authorities should exercise a general supervision over a private elevator or warehouse business in the interests and for the protection of the grain growers who bring their product to market; that by reason of the dependence of the grain seller upon the party operating the elevator for fair and honest grades, weight and dockage, it was required that such owner or owners procure a license, thereby giving to the supervising power of the state, an opportunity of establishing such rules and regulations relative to the conduct of the business as will insure fair and honest weights and grades of grain. This regulation in no manner interferes with the conduct of the business or deprives the owner of any of his property rights, but is a fair and reasonable regulation of a business in which the public certainly has an interest.

It is also provided in the act that complaint may be made in writing to the Railroad and Warehouse Commission by any person aggrieved by the party operating any country elevator or country warehouse under this act, who fails to give just and fair weights and grades, or is guilty of making unreasonable dockage for dirt or other cause, or fails in any manner to operate his elevator or warehouse fairly, justly and properly. Upon the making of such complaint the Railroad and Ware-

house Commission may inquire into and investigate the same, and if it is found that the complaint and charges made are true, action is instituted to obtain the proper redress and relief to the party injured.

The necessity for the enforcement of these provisions relative to investigation and inquiry upon complaint made against the owner or owners of any elevator and the result of such investigation, will no doubt play an important part in the issuance by the Railroad and Warehouse Commission of a license to conduct such business. The owner of an elevator or warehouse who has been charged with fraudulent and dishonest weighing, grading and docking of grain, and who has not conducted his business in accordance with the rules and regulations made by the Commission would be denied a license to continue in such business. The necessity for obtaining a license before the owner of an elevator or warehouse could lawfully transact such business, would enable the state authorities to confine the business of purchasing grain at elevators on the right of way of railroads to the limits prescribed by fairness and honesty. The business of receiving, handling and storing grain in elevators and warehouses has, within the past twenty years in this state, been brought by successive legislative enactments gradually within the control and supervision of the state. This legislation was called for by the unjust practices and abuses which were the outgrowth of the unparalleled development of the grain growing interests of the state and the rapid multiplying of railroads, elevators and warehouses. The object of all legislation affecting the receiving, storing

and transporting of grain has been for the protection of the grain grower against the unfair practices of elevator and warehouse companies and the excessive rates of transportation companies.

At the time of the passage of the act of 1895, the history of the grain business in this state had become characterized by certain evils and abuses. The same is true of the business as carried on in all important grain states and grain centers. Some of the most important judicial decisions of this country have resulted from the legislation of the states addressed to the correction and prevention of such evils. Because of the situation of such houses and their intimate relationship to the business of transportation of grain by rail, the legislature has subjected them to regulation.

Munn vs. Illnois, 94 U. S. 113.

Budd vs. N. Y., 143 U. S. 517.

Brass vs. Stoesser, 153 U. S. 391.

There are provisions of the act which cannot be made applicable to elevators and warehouses which do not handle the grain of the public for hire. The effect of the act as construed by the state court is not to make it the duty of a private elevator situated upon the right of way of a railway to handle the grain of the public and to issue storage receipts in conformity to its provisions.

The opinion of the state court as to the application of the act is sustained by this court in the case of *Brass vs. Stoesser,* 153 U. S. 404, in passing on the consti-

tutionality of a statute of North Dakota similar to the one here in question, in which it is said:

> "Another argument advanced is based on the admitted allegation that the principal business of the plaintiff in error in connection with his warehouse is in storing his own grain, and that the storage of the grain of other persons is and always has been a mere incident and it is said that the effect of this law will be to compel him to renounce his principal business and become a mere warehouseman for others. We do not understand this law to require the owner of a warehouse building used by him only to store his own grain, to receive and store the grain of others. Such a duty only arises when he chooses to enter upon the business of receiving and storing the grain of other persons for profit."

IV.

When a part of a statute is unconstitutional that fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in subject matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning that it cannot be presumed the legislature would have passed the one without the other.

Cooley Constitutional Limitations, (6th Ed.) p. 210.

O'Brien vs. Krenz, 36 Minn. 136.

Myer vs. Berlandi, 38 Minn. 438.

If one provision of a law is invalid and others valid, the latter are not affected by the void provision unless they are plainly dependent on each other and so inseparably connected that they cannot be divided without defeating the object of the statute.

Duyree vs. Mayor, 96 N. Y. 477.

This Court in the case of *Packing Company vs. Keokuk*, 95 U. S. 80, in construing a statute requiring every railway, steamboat, canal and navigation company and all other companies doing business in the state, and upon whose works freight might be transferred, whether by companies or individuals, to pay certain taxes, the act applying to domestic as well as interstate transportation, held, that as to the latter, the act was void, though that part was not distinguishable in terms from the valid provision, say:

> "Statutes that are constitutional in part only, will be upheld, so far as they are not in conflict with the constitution, provided the allowed and prohibited parts are severable."

The provisions of the act here in question which are applicable only to elevators and warehouses situated on the right of way of a railway company handling the grain of the public for a compensation, are easily distinguishable and severable from the provisions of the act which apply only to elevators, so situated, which do not handle the grain of others for a compensation.

The provisions of the act requiring a license to be taken out by the owner or owners of an elevator or warehouse and making such business subject to certain rules and regulations by the State Railroad and Warehouse Commission, are in no wise dependent for their operation and effect upon the provision of the law applicable only to elevators or warehouses handling the grain of the public for a compensation.

Justice Mitchell of the State Court, in an opinion in this case in which he dissents from the majority, sustains the contention of the defendant in error that the provision of the act requiring a license is a proper exercise by the state of its police power, in the following terms:

> "In view of the facts, among others, that grain is the principal agricultural product of the state, that in the purchase and sale of it there is great liability to abuses in the matter of weights and grades, and that these are usually determined by the court that although the owner of a warehouse uses it exclusively for the storage of his own grain, yet if he uses it for the purpose of buying grain from the public, thus rendering it in effect, a public market, his business is a proper subject of police regulation by the state to the extent of providing such rules and regulations as are reasonably necessary to secure to the public just and correct weights and grades. The requirement of a license may be a resaonable regulation in such cases as a means of enabling state officials to ascertain who are engaged in the business."
> (Record, Fol. 61.)

It has been the uniform rule of this Court, never to depart from the construction of a state constitution by its highest judicial authority, unless such construction is manifestly unsound.

Railroad Co. vs. *Gaines*, 97 U. S. 697.

Burgiss vs. *Seligman*, 107 U. S. 32.

Flack vs. *Connecticut*, 109 U. S. 371.

It is respectfully submitted that the Supreme Court of Minnesota did not err in the decision under review.

W. R. DOUGLAS,
Attorney General,

W. J. DONAHOWER,
Assistant Attorney General,
Attorneys for Defendant in Error.